

June 03, 2005

Richard D. King  
Foothill Corporate Center  
5820 Stoneridge Mall Road, Suite 205  
Pleasanton, CA 94588

**Re: Your Request for Informal Assistance**  
**Our File No. I-05-095**

Dear Mr. King:

This letter is in response to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").<sup>1</sup> The Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained herein apply only to prospective actions. Since your questions are general in nature, we are treating your request as one for informal assistance pursuant to Regulation 18329(c).<sup>2</sup>

### QUESTIONS

1. Are payments you receive for reimbursement for travel expenses for you and your spouse, as well as for lodging, food, and transportation paid by Rotary International and affiliated organizations required to be reported on Schedule E or Schedule F of the Form 700, Statement of Economic Interests?
2. If the payments, as well as the lodging, food, and transportation you and your spouse receive are considered gifts, are they subject to the Act's limit of \$360 per calendar year per source?
3. Are gifts you receive from local Rotary organizations throughout the world for your service and participation in Rotary International reportable and subject to the gift limit of \$360?

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code section 83114; 2 Cal. Code of Regs. section 18329(c)(3).)

## CONCLUSIONS

- 1-2. If the reimbursement constitutes a “gift,” and it exceeds the statutory gift limit, you may not accept the payment. On the other hand, if you can show that the value of your services to the payor is equal to or greater than the full amount of the reimbursement, the reimbursement would be “income” under the Act, and not a “gift.” In that event, you could accept the payment without violating the Act. Income is reportable unless an exception applies, as discussed in the analysis below.
3. Plaques with a value of less than \$250, refreshments, and similar non-cash nominal benefits, such as a mug or t-shirt, provided to you during the entire event at which you give a speech, participate in a panel or seminar, or provide a similar service, are not considered gifts and, therefore, are not required to be reported. We are unable to determine whether other items you receive may be reportable gifts subject to the gift limit of \$360 based on the facts you provided.

## FACTS

You are a planning commissioner for the City of Fremont. You are also the past world President of Rotary International and, in that capacity, travel widely to local Rotary organizations in California, the United States, and throughout the world. Once at the various destinations, you speak on behalf of Rotary International, give classes about building membership, sign books, as well as give talks about Rotary International’s goal regarding polio eradication and other service projects.

Travel expenses are usually reimbursed, and lodging, food, and transportation are provided at no cost for you and your spouse when traveling on behalf of Rotary International by:

- (1) Rotary International, a 501(c)(4) corporation;
- (2) Rotary Foundation, a 501(c)(3) corporation; or
- (3) The local Rotary organization (because many are located in other countries, you are not aware of their corporate/tax status).

## ANALYSIS

As a planning commissioner for the City of Fremont, you are a public official subject to the provisions of the Act. (Section 82048.) The Act requires all public officials to file a statement of economic interests (“SEI”) each year. Public officials file their SEI on Form 700 disclosing investments, real property interests, and income and gifts that they have received during the year. (Section 87200 et seq.) The Act prohibits a public official from making governmental decisions that affect an entity or individual that has been a source of income or gifts to the official. (Section 87103(c) and (e).) The Act also prohibits public officials from accepting gifts of more than \$360 per year from any single source. (Section 89503.)

Public officials frequently receive offers from “third parties” for payment of travel expenses to events where the official will make a speech or attend a conference or seminar. Travel expenses under the Act include transportation, meals, and necessary accommodations. Third parties who typically offer to pay travel expenses for public officials include private businesses and corporations (including 501(c)(3) non-profit corporations), private interest groups and organizations, government agencies other than the one by which the official is employed, and foreign governments.

Under the Act, when a third party pays for a public official’s travel, the payments are generally considered either *income* or (most commonly) a *gift* to the public official. For this reason, the SEI (Form 700) has Schedule F, titled “Income/Gifts — Travel Payments, Advances, and Reimbursements.” On Schedule F, public officials disclose payments for travel that they have received during the year, whether the payment was a gift or income, the name and address of the entity that paid for the travel, the amount of the payment, and the date. Our analysis begins with determining whether payment by Rotary International, Rotary Foundation, and local Rotary organizations of expenses associated with travel to various speeches, seminars, and other gatherings is properly classified as “income” or a “gift” under the Act.<sup>3</sup>

#### 1. *The Anticipated Payment Viewed As A “Gift.”*

Non-governmental payments for a public official’s travel expenses are usually classified as “gifts,” since the payor is typically some person or entity with whom the official does not have an ongoing employment or professional relationship which might justify classification of the payment as “income.” Your situation is different, since you serve in an official capacity as past world President of Rotary International. We will, nonetheless, begin our analysis with treatment of the anticipated payment as a gift.<sup>4</sup> The Act defines a “gift,” in pertinent part, at Section 82028(a):

“(a) ‘Gift’ means, except as provided in subdivision (b), any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received.... Any person other than a defendant in a criminal

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<sup>3</sup> You also are subject to an honorarium ban from sources you are required to report on your statement of economic interests as income or gifts. (Sections 89501 and 89502.) An honorarium means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. Generally, reimbursement for travel expenses do not constitute prohibited honoraria under the Act because they are not payments made in consideration for giving a speech or attending an event. Subdivision (c) of section 89501 states that “[s]ection 89506 shall apply to all payments, advances, or reimbursements for travel and related lodging and subsistence.”

<sup>4</sup> You have not provided details on the manner in which the “gift” may be offered to your spouse. Depending on the circumstances, it is possible that such a gift may be regarded as a gift to your spouse, and not to you. (Regulation 18944; *Remelmeyer* Advice Letter, No. I-98-211 (copy enclosed).) If the payment to your spouse is properly classified as a gift to *her*, and not to you, that gift would neither be reportable by you, nor would it count against the \$360 limitation on gifts to you. But if the gift offered to you includes payment for the cost of bringing your spouse, the entire value of the gift would be chargeable to you. (Regulation 18944(d).) For purposes of this analysis, we will assume that any gifts of travel are fully allocable to you.

action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.”

Travel is presumed to confer *some* personal benefit on you as you travel to attend a seminar, make a speech, or otherwise participate in an event raising awareness of the goals of Rotary International. If you believe that Rotary International, Rotary Foundation, and local Rotary organizations’ payments for such trips should not be regarded as a “gift,” section 82028 requires that you be able to show that the value of your services to these organizations equals or exceeds the value of the trip you receive in return. There is no set formula for determining the relative value of a travel payment to any “consideration” that you might provide to the payor. The value of your services to the payors may be established by evidence of the customary rate of compensation for similar services, by your time devoted to Rotary International, or by any other reasonable measure.

If the value of your services meets or exceeds the value of the travel payments, those payments are not a “gift” within the meaning of the Act. On the other hand, if you are *not* able to establish by some reasonable standard that your services to Rotary International at least equal the value of the travel payments at issue, you must regard those payments as a “gift” within the meaning of the Act. A public official may not, of course, accept “gifts” from any single source if their total value exceeds \$360 within any 12-month period. (Section 89503.)<sup>5</sup> The Act has certain exceptions to the \$360 annual gift limit specifically applicable to travel payments; section 89506 provides as follows:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national or international public policy, are not prohibited or limited by this chapter if either of the following apply:

(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private education institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the

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<sup>5</sup> The statutory gift limit, adjusted for inflation every two years, has recently been adjusted to \$360 per single source over any 12-month period. (Regulation 18940.2.)

Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.”

In those instances when you make a speech or participate on a panel, subdivision (a)(1) of section 89506 may be applicable. When the payments are made by Rotary Foundation, or any other 501(c)(3) corporation, subdivision (a)(2) does not require that you give a speech at the event for the exception to apply. However, both subdivisions of section 89506(a) require that the travel be “reasonably related to a legislative or governmental purpose, or to an issue of state, national or international public policy.” Although the interests of Rotary International are no doubt laudable, they are the interests of a private corporate entity. From the information you have provided, we cannot say that your travel and participation, or that of your spouse, is reasonably related to a legislative or governmental purpose, or to any public policy issue, as those terms are used in section 89506(a).

As provided in section 89506(b), gifts of travel not exempted under subsection (a) are subject to the \$360 annual gift limit of section 89503(c). Since the cost of the travel you describe is undoubtedly well in excess of \$360, you may not accept such a payment, if it is classified as a “gift” for purposes of the Act.

## *2. The Anticipated Payment Viewed As “Income.”*

“Income” is broadly defined at section 82030(a) to include all forms of payment received by a public official, including reimbursement of expenses, per diem payments, and “gifts.”<sup>6</sup> If Rotary International’s payment of travel expenses is not classified as a “gift” because you can show that you provide consideration of equal or greater value,<sup>7</sup> that payment must *still* be classified as “income.” However, some forms of income (not including gifts) are expressly exempted from regulation under the Act. (Subdivision (b) of Section 82030.) Subdivision (b)(2) is pertinent here, exempting from treatment as “income” any:

“(2) Salary and reimbursement for expenses or per diem received from a state, local, or federal government and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.”

If you conclude that payment of your travel expenses by the Rotary organizations is not a “gift” within the meaning of the Act, it is a form of income. In that case, the Act would

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<sup>6</sup> Section 82030 provides that except for gifts, the term “income” does not include income received from any source that is located outside the filer’s jurisdiction, or that is not doing business within the jurisdiction, not planning to business within the jurisdiction, or has not done business within the jurisdiction during the previous two years. We have no information to determine whether the Rotary organizations are located in or doing business in the city of Fremont.

<sup>7</sup> As compared to the value of the reimbursements for your travel expenses and those of your spouse.

not prevent you from accepting reimbursement of travel expenses to perform the duties you describe. Payments from Rotary International, a 501(c)(4) organization, and the other Rotary organizations, are payments that are reportable. However, you would not be required to report income from the Rotary Foundation, a 501(c)(3) organization, on your Form 700 insofar as the income was a reimbursement for your *own* travel-related expenses. You *would* be required to report the amount attributable to your spouse's travel. The exception of Section 82030(b)(2) is not applicable to any payment made for a spouse's travel.

*3. Receipt of Small Gifts for Your Participation.*

Regulation 18942 provides exceptions to the definition of a "gift." Subdivision (a)(6) provides that the following is not a gift:

"A personalized plaque or trophy with an individual value of less than two hundred fifty dollars (\$250)."

Subdivision (a)(11) provides an exception to the definition of a "gift" for:

"Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity. These items are not payments and need not be reported by any filer."

Thus, if the gifts you receive fall into these categories, you are not required to report them on your Form 700. However, other gifts received, unless they meet the definition of "income" as stated above, will be deemed a "gift" and be reportable and subject to the gift limit of \$360 per source per calendar year.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: Kevin S. Moen, PhD  
Political Reform Consultant II  
Technical Assistance Division

Enclosures  
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